



Linda S. Adams
Secretary for
Environmental Protection

**California Regional Water Quality Control Board
North Coast Region
William R. Massey, Chairman**

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Arnold
Schwarzenegger
Governor

January 19, 2007

Mr. Randy Gans
323 5th Street
Eureka, CA 95501

Dear Mr. Gans:

Subject: Issuance of Clean Water Act Section 401 Certification (Water Quality Certification) for the Balloon Track Road Maintenance Project

File: Balloon Track Road Maintenance Project (WDID No. 1B06171WNHU)

This Order by the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), is being issued pursuant to Section 401 of the Clean Water Act (33 USC 1341), in response to your request for Water Quality Certification for activities to repair potholes that have formed in existing gravel access roads and road shoulders at the Balloon Track in Eureka, Humboldt County. On November 3, 2006, the Regional Water Board received your application and a \$500.00 processing fee. On December 22, 2006, we deemed the application complete and posted information describing the project on the Regional Water Board's website for a 21-day public review and comment period. We did not receive any public comments on this project.

Project Description: The Balloon Track property contains approximately 4.82 acres of gravel access roads. Numerous large potholes have formed on the roads and shoulders. The potholes exhibit ordinary high water marks and other physical characteristics and the U.S. Army Corps of Engineers (Corps) determined that the potholes are waters of the United States. The Corps has authorized the project under Nationwide Permit Number 3 (File No. 301570N), pursuant to Clean Water Act, section 404.

The proposed maintenance project consists of grading the access roads and road shoulders using heavy equipment and hand crews. Approximately 1,200 cubic yards of gravel will be used to fill the potholes, out of grade areas, and heavily rutted areas. The primary purpose of the proposed project is to provide safe vehicle access within the Balloon Track and adjacent parcels. The project is also needed to prevent further degradation of the property by vehicles that

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drive off the access roads to avoid the large potholes filled with water. The proposed project is scheduled to occur as soon as possible and is expected to take approximately 60 days to complete.

- Receiving Waters: Pot holes in existing roadways in the Eureka Plain Hydrologic Unit No. 110.00
- Latitude/Longitude: 40.80337N/124.17837W
- Filled or Excavated Area: Area Temporarily Impacted: none
Area Permanently Impacted: 0.74 acre of potholes on existing gravel roads
- Federal Permit: U.S. Army Corps of Engineers Nationwide Permit No. 3 (File No. 301570N).
- Compensatory Mitigation: None
- Noncompensatory Mitigation: Noncompensatory mitigation for this project includes the installation of hay wattles and orange construction fencing along portions of the roads and shoulders to ensure that maintenance activities do not extend into any sensitive areas along the roads.
- CEQA Compliance: The Regional Water Board, as the lead California Environmental Quality Act (CEQA) agency, has determined that this project qualifies for a Categorical Exemption, Class 1, Section 15301 – Existing Facilities, pursuant to CEQA.
- Standard Conditions: Pursuant to Title 23, California Code of Regulations, Section 3860 (23 CCR 3860), the following three standard conditions shall apply to this project:
- 1) This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and 23 CCR 3867.
 - 2) This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent

certification application was filed pursuant to 23 CCR 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

- 3) The validity of any nondenial certification action (actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR 3833, unless otherwise stated in writing by the certifying agency.

Additional Conditions: Pursuant to 23 CCR 3859(a), the applicant shall comply with the following additional conditions:

- 1) The applicant shall notify Regional Water Board staff at least five working days (working days are Monday – Friday) prior to the commencement of the project, with details regarding the schedule of operations, to allow staff the opportunity to be present onsite and to answer any public inquiries that may arise regarding the project.
- 2) A copy of this permit must be provided to all contractors and subcontractors conducting work on this project, and a copy must be in their possession at the work site. It is the applicant's responsibility to ensure that the contractor and all subcontractors are provided a copy of this permit.
- 3) All activities and BMPs shall be implemented according to the submitted application and the conditions in this Water Quality Certification.
- 4) Prior to implementing any change to the project that may have a significant or material effect on the findings, conclusions, or conditions of this Order, the Applicant shall obtain the written approval of the Regional Water Board Executive Officer.
- 5) Adequate BMPs for sediment and turbidity control shall be implemented and in place during and after construction.
- 6) Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be outside of waters of the United States. Fueling, lubrication, maintenance,

storage and staging of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the United States. At no time shall the applicant use any vehicle or equipment which leaks any substance that may impact water quality. If, at any time, an unauthorized discharge to surface waters occurs from operation, fueling, lubrication, maintenance, storage or staging activities, the project shall cease immediately and Regional Water Board staff shall be notified promptly.

- 7) Project activities shall comply with provisions in the North Coast Region Water Quality Control Plan (Basin Plan).
- 8) The project site may be visited and assessed by Regional Water Board staff to document compliance with this certification.
- 9) This Order is not transferable. In the event of any change in control of ownership of land presently owned or controlled by the applicant, the applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.

To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of the Order. The request must contain the requesting entity's full legal name, the state of incorporation if a corporation, address, and telephone number of the person(s) responsible for contact with the Regional Water Board. The request must also describe any changes to the Project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the Project as described in this Order.

Water Quality Certification: I hereby issue an order [23 CCR Subsection 3831(e)] certifying that any authorized discharge from the Balloon Track Road Maintenance Project, (Facility No. 1A06171WNHU) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality

Standards and Implementation Plans”), 306 (“National Standards of Performance”), and 307 (“Toxic and Pretreatment Effluent Standards”) of the Clean Water Act [33 USC Subsection 1341 (a)(1)], and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification.

Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicant's project description, and b) compliance with all applicable requirements of the Regional Water Board's Water Quality Control Plan for the North Coast Region (Basin Plan).

This Order may be terminated or modified for cause, including, but not limited to: (a) violation of any condition contained herein; (b) misrepresentation or failure to disclose fully all relevant facts; and (c) change in any condition that requires either a temporary or permanent reduction or elimination of the certified discharge.

Any violation or threatened violation of the conditions in this Order shall be subject to any remedies, penalties, process or sanctions under state law, including civil liability under Water Code section 13385.

Expiration:

The authorization of this certification for any dredge and fill activities expires on January 19, 2011. Conditions and monitoring requirements outlined in this certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

Please notify Dean Prat of our staff at (707) 576-2801 prior to construction (pursuant to Additional Condition No. 1 above) so that we can answer any public inquiries about the work.

Sincerely,

Catherine Kuhlman
Executive Officer

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cc: Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions, 333
Market Street, San Francisco, CA 94599
U.S. Army Corps of Engineers, District Engineer, P.O. Box 4863, Eureka, CA
95502
Mr. Terry Huffman, 828 Mission Avenue, San Rafael, CA 94901